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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

ROBERT "BOB" BURNS - Chairman  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON  
LEA MÁRQUEZ PETERSON

DEC 17 2019

DOCKETED BY

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In the matter of

WAGNER CAPITAL MANAGEMENT,  
LLC, an Arizona limited liability company,  
and

ZACHARY S. WAGNER, CRD #6694074,  
and Jessica N. Wagner, husband and wife,

Respondents.

DOCKET NO. S-21072A-19-0061

DECISION NO. 77497

**ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION, ORDER OF  
REVOCATION, ORDER OF DENIAL,  
ORDER FOR ADMINISTRATIVE  
PENALTIES AND CONSENT TO SAME**

**BY: ALL RESPONDENTS**

Respondents Wagner Capital Management, LLC ("WCM") and Zachary S. Wagner ("Wagner") (WCM and Wagner, collectively referred to as "Respondents") and Wagner's spouse ("Respondents Spouse") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") and Articles 7 and 8 of the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act") with respect to this Order to Cease and Desist, Order for Restitution, Order of Revocation, Order of Denial, Order for Administrative Penalties, and Consent to Same ("Order"). Respondents and Respondent Spouse admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

**I.****FINDINGS OF FACT****Respondents**

1. Wagner, CRD #6694074, has resided in Arizona during the timeframe relevant to this Order, i.e. 2016 – March 2019.

2. WCM is a member-managed, Arizona limited liability company formed on June 29, 2017. Wagner is WCM's only employee and performed all of WCM's consulting, advisory, and investment services.

3. Respondent Spouse was at all relevant times the spouse of Wagner. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) and A.R.S. § 44-3291(C) solely for purposes of determining the liability of the marital community.

4. At all times relevant, Wagner was acting for his own benefit and for the benefit or in furtherance of his and Respondent Spouse's marital community.

**Wagner's Registration History and Current Application**

5. Wagner has been registered with the Commission as a securities salesman since January 24, 2018. During that time, he was associated with Merrill Lynch, Pierce, Fenner & Smith Inc. He was employed at Merrill Lynch from October 26, 2017 – September 7, 2018.

6. Wagner did not disclose to Merrill Lynch that he and WCM were buying and selling securities for the investor client described in this Order. Merrill Lynch terminated Wagner on September 7, 2018, for this failure to disclose.

7. Upon his termination from Merrill Lynch, Wagner was not associated with a registered dealer and his salesman registration with the Commission was automatically suspended pursuant to A.R.S. § 44-1949.

8. Since February 6, 2019, Wagner has been employed at OneAmerica Securities, Inc., CRD #4173. On March 13, 2019, Wagner applied with the Commission for registration as a salesman and licensing as an investment adviser representative associated with OneAmericia Securities.

1           9.     In his Form U4, Question 14G, submitted with his application to the Commission,  
2 Wagner represents that he had not been notified in writing of any state securities regulator  
3 investigation.

4           10.    In fact, the Division served Wagner and WCM with subpoenas, which he received on  
5 January 29, 2019. The subpoenas state that they are being served as part of an investigation and  
6 involve possible violations of the Securities Act and IM Act. Additionally, pursuant to these  
7 subpoenas, Wagner provided documents and attended an examination under oath on March 7, 2019,  
8 where it was disclosed to him that the Division could seek administrative action for his violations of  
9 the Securities Act and IM Act.

10                               **Respondents' Client/Investor Transactions**

11           11.    In 2016, Wagner worked at Wells Fargo. His duties included helping customers  
12 apply for small business loans.

13           12.    While employed at Wells Fargo, Wagner met M.O., an Arizona resident, and helped  
14 M.O. apply for a small business loan.

15           13.    In August 2017, M.O. was planning to open a daycare facility for special needs  
16 children. At this time Wagner no longer worked for Wells Fargo and had opened WCM to provide  
17 consulting and financial services.

18           14.    In an August 31, 2017 email with the subject line "Overview of Wagner Capital  
19 Management" Wagner informed M.O. and her husband that his "goal is to work directly with  
20 individuals who are business owners assisting in everything financial." He asked M.O. to let him  
21 know when they could meet to "go over a couple ideas I have for you both and your business that  
22 may help you stretch some of that hard fought money you have right now." He also asked M.O.  
23 "[h]ow much in total funds do you have collected or access to currently?" and to estimate expenses  
24 for the daycare facility.

25           15.    In her response to the above-described email, M.O. provided Wagner with a  
26 summary of her business funds. This summary showed that M.O. had available funds totaling

1 \$83,398.52 and that the source of these funds was various personal loans. M.O. estimated that the  
2 daycare facility would cost \$57,151 per month to operate.

3 16. In another August 31, 2017 email, Wagner told M.O. that he would take the  
4 available cash, wrap it up into one cash management account with WCM, and generate \$2000 –  
5 \$3000 each month in margin-approved accounts with Fidelity Investments and TD Ameritrade  
6 while she waited to sign a lease for the daycare facility building. When she was ready to sign a  
7 lease, he would wire \$50,000 from the margin accounts to M.O.’s bank accounts.

8 17. On September 14, 2017, Wagner sent M.O. an email with an attached document  
9 titled “Business and Investment Proposal prepared for [M.O.’s entity], by Zachary Wagner, Wagner  
10 Capital Management, LLC.” The proposal is signed by Wagner and dated September 11, 2017.

11 18. The second page to this proposal is a cover letter addressed to M.O. and her entity.  
12 The letter states that “By hiring [WCM] to take care of all your financial needs, you can ensure a  
13 step in the right direction. By partnering with us as your wealth manager...you have the services of  
14 highly qualified, experienced professionals.”

15 19. The next page is titled “The Proposal.” It states that “investment management” is a  
16 service Wagner/WCM perform. It further states that while “most advisers” focus on one thing,  
17 WCM looks at long-term growth and “specialize[s] in use of derivatives to maximize returns.”  
18 WCM refers to its customers as “clients” and touts its superior communication with its clients.  
19 WCM claims to have “proven expertise in areas like investment management[.]” In the section  
20 titled “About Us” WCM says that one of its functions is “asset management” where they utilize “a  
21 variety of strategies including Long/Short Equities” and “arbitrage.” Further, they have a team of  
22 financial experts in business for over 35 combined years.

23 20. The proposal also has pricing for Wagner/WCM’s services. WCM charges 1.75%  
24 for assets under management and 17.5% on gains.

25 21. A September 16, 2017 email from Wagner says that his main focus for M.O. is  
26 “using the profit for the funds to pay any current loans you have and grow the overall account....I

1 should be able to generate \$2k-\$3k a month in additional income from the money we will invest  
2 and allocate this Tuesday or Wednesday.”

3 22. In conversations and email, Wagner represented to M.O. that he would make  
4 distributions to M.O. or directly pay expenses related to starting M.O.’s daycare business, including  
5 paying construction expenses, taxes, and interest on loans and credit cards.

6 23. M.O. did not receive subscription documents or any other disclosure or investment  
7 documents from Wagner or WCM.

8 24. Based on the representations in Wagner’s emails, the attached proposal, and in  
9 meeting with Wagner, M.O. delivered two cashier’s checks—one for \$48,058, the other for  
10 \$23,870, a total of \$71,928—to WCM on September 19, 2017.

11 25. On or about September 19, 2017, Wagner deposited M.O.’s \$48,058 check into  
12 WCM’s Fidelity trading account.

13 26. On or about September 19, 2017, Wagner deposited M.O.’s \$23,870 cashier’s check  
14 into WCM’s account at Chase. At the time of the deposit, WCM’s Chase account had a balance of  
15 \$335.53.

16 27. Over the course of the next two weeks, Wagner transferred \$14,000 from the Chase  
17 account to WCM’s Fidelity trading account. He spent most of the remaining funds in the account  
18 on purchases consistent with personal use. The Chase account’s ending balance on October 5, 2018  
19 was \$265.87.

20 28. Beginning in September 2017, and continuing through December 18, 2017, Wagner  
21 bought and sold securities in the form of stocks, stock options, and index funds in the WCM  
22 Fidelity account. This trading activity resulted in \$11,322.81 of losses from trading and \$2,029.13  
23 of fees.

24 29. Between October 6, 2017 and January 2, 2018, Wagner transferred a net of  
25 \$48,628.12 from the WCM Fidelity account to WCM’s Chase account. During this time, Wagner’s  
26

1 deposits into the Chase account from other sources totaled only \$3,884. Wagner spent the money in  
2 this Chase account in the following ways:

- 3 a. \$24,250 net transfers to his personal Merrill Lynch account (discussed more  
4 in the next paragraph)
- 5 b. \$15,948 total payments to and on behalf of M.O.
- 6 c. \$8,803 from four withdrawals
- 7 d. \$4,620 to Wagner's apartment complex
- 8 e. \$3,000 check written to himself
- 9 f. \$2,527 to a contractor that performed work at his parents' wine bar
- 10 g. \$2,225 for payments on three personal credit card accounts
- 11 h. \$900 in cash from ATMs
- 12 i. Various other payments consistent with personal use

13 30. Between November 27, 2017 and January 31, 2018, Wagner transferred a net total  
14 of \$24,250 from the WCM Chase account to his personal Merrill Lynch account. His first transfer  
15 from WCM was for \$20,500 and occurred on November 27, 2017, when the Merrill Lynch  
16 account's balance was \$0. That same day, Wagner wrote a \$20,000 check from this Merrill Lynch  
17 account for a loan to a local hay-hauling company. At the time of the loan to the hay-hauling  
18 company, that company was in jeopardy because of a lack of inventory and capital. On December  
19 8, 2017, Wagner received an \$8,000 repayment on this loan, which he deposited in WCM's Chase  
20 account. (In February and March 2018, the hay-hauling company made \$2,500 and \$8,000  
21 payments to Wagner, which he deposited in his personal account). By January 31, 2018, the  
22 balance in this Merrill Lynch account was \$0.

23 31. Wagner transferred a net of \$4,337 from the Merrill Lynch account described in the  
24 preceding paragraph to a second, personal Merrill Lynch account that had a \$0 balance prior to the  
25 transfers. From this second, personal Merrill Lynch account, Wagner withdrew \$1,200 in cash,  
26



1 made credit card purchases totaling \$704, and lost the remaining funds trading call options. By the  
2 end of February 2018, the balance of this second Merrill Lynch account was \$0.

3 32. After Wagner had lost nearly all of M.O.'s money, he still represented to her that his  
4 business was healthy and that her funds had significant value.

5 33. On several occasions, M.O. asked Wagner to provide an update on the value of her  
6 funds.

7 34. On December 29, 2017, Wagner provided M.O. with a statement that purported to  
8 show the value of M.O.'s funds that Respondents managed. This was the only account statement  
9 M.O. received from Respondents. In this December 29, 2017 statement, M.O.'s funds are titled  
10 "Shares in WC Diversified Funds, Proportionate Shares" and it shows her owning 5.81252 shares  
11 with a "Unit price" of \$10,000 for total price of \$58,125.21.

12 35. The December 29, 2017 statement shows that WCM has \$390,000 total assets under  
13 management. It also lists WCM's top five investment holdings and shows these holdings as stocks  
14 and mutual funds. However, on December 29, 2017, WCM's Fidelity trading account had a value  
15 of \$0.22, WCM's bank account had a balance of \$150.90, and Wagner's personal trading account  
16 held only \$1,120 of call options in a single company—a company that was not listed in the "top  
17 five" investment holdings in the statement (by the end of the day on December 29, 2017, Wagner  
18 had sold those options for a net loss of \$165.38). Additionally, M.O. was Wagner and WCM's sole  
19 investor; Respondents had no other investor funds under management.

20 36. As late as January 7, 2018, Wagner represented to M.O. via email that he still held  
21 various investments with her funds, that these investments would grow, and that he would soon  
22 start moving cash out of the investments for future use.

23 37. On January 26, 2018, Wagner told M.O. that he would make payments to a third  
24 party pursuant to a request from M.O. He failed to do so. As discussed above, by this time Wagner  
25 had lost or spent all of M.O.'s money.

26

**II.****CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act, and Investment Management Act.

2. Respondents offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(16), 44-1801(22), and 44-1801(27).

3. Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

4. Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices, or courses of business that operate or would operate as a fraud or deceit. Respondents' conduct consists of the following:

- a. Representing to M.O. that Respondents would invest her funds in securities to generate a monthly income of \$2,000 – \$3,000 then spending the majority of those funds on items consistent with personal use and losing the remaining funds on trading securities;
- b. Representing to M.O. that Respondents had purchased securities with her funds and providing a written statement showing the names of those securities and the value of her investment when in fact most of her funds had been lost or used on expenses consistent with personal use.
- c. Representing to M.O. that as of December 29, 2017, WCM had \$390,000 of total assets under management and that M.O.'s investment was worth \$58,125.21 when in fact Respondents did not manage assets of any clients other M.O., and on December 29, 2017, WCM's Fidelity trading account had a value of \$0.22, WCM's bank account had a balance of \$150.90, and Wagner's personal trading account held only \$1,120 of call options in a single company (by the end of the



1 day on December 29, 2017, Wagner had sold those options for a net loss of  
2 \$165.38).

3 5. Respondents' conduct subjects Wagner to an order of revocation and denial pursuant  
4 to A.R.S. § 44-1962(A)(1), (2) and (10).

5 6. Respondents violated A.R.S. § 44-3151 by transacting business in this state as an  
6 investment adviser or investment adviser representative while neither licensed nor exempt.

7 7. Respondents' conduct subjects Wagner to an order of revocation and denial pursuant  
8 to A.R.S. § 44-3201(A)(1), (3) and (13).

9 8. Respondents violated A.R.S. § 44-3241 by (a) employing a device, scheme, or  
10 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, (c)  
11 misrepresenting professional qualifications with the intent that the misrepresentation be relied on,  
12 and (d) engaging in transactions, practices, or courses of business that operate or would operate as a  
13 fraud or deceit. Respondents' conduct consists of the following:

- 14 a. Representing to M.O. that Respondents would invest her funds in securities to  
15 generate a monthly income of \$2,000 – \$3,000 then spending the majority of  
16 those funds on items consistent with personal use and losing the remaining funds  
17 on trading securities;
- 18 b. Representing to M.O. that Respondents had purchased securities with her funds  
19 and providing a written statement showing the names of those securities and the  
20 value of her investment when in fact most of her funds had been lost or used on  
21 expenses consistent with personal use.
- 22 c. Representing to M.O. that as of December 29, 2017, WCM had \$390,000 of total  
23 assets under management and that M.O.'s investment was worth \$58,125.21  
24 when in fact Respondents did not manage assets of any clients other than M.O.  
25 and on December 29, 2017, WCM's Fidelity trading account had a value of  
26 \$0.22, WCM's bank account had a balance of \$150.90, and Wagner's personal

1 trading account held only \$1,120 of call options in a single company (by the end  
2 of the day on December 29, 2017, Wagner had sold those options for a net loss  
3 of \$165.38).

4 9. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.  
5 § 44-2032, A.R.S. § 44-3292, A.R.S. § 44-1962, and A.R.S. § 44-3201.

6 10. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
7 2032, A.R.S. § 44-3292, A.R.S. § 44-1962, and A.R.S. § 44-3201.

8 11. Respondents' conduct are grounds for administrative penalties under A.R.S. § 44-  
9 2036, A.R.S. § 44-3296, A.R.S. § 44-1962, and A.R.S. § 44-3201.

10 12. Respondent Wagner acted for his own benefit and on behalf of and for the benefit of  
11 his marital community and this order of restitution and administrative penalties is a debt of the  
12 community.

13 13. Wagner directly or indirectly controlled WCM within the meaning of A.R.S. § 44-  
14 1999, therefore, he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as  
15 WCM for any violations of A.R.S. § 44-1991.

### 16 III.

### 17 ORDER

18 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'  
19 consent to the entry of this Order, attached and incorporated by reference, the Commission finds  
20 that the following relief is appropriate, in the public interest, and necessary for the protection of  
21 investors:

22 IT IS ORDERED, pursuant to A.R.S. § 44-2032 and A.R.S. § 44-3292, that Respondents,  
23 and any of Respondents' agents, employees, successors and assigns, permanently cease and desist  
24 from violating the Securities Act and the Investment Management Act.

25 IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry  
26 of Order.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, A.R.S. § 44-3292, A.R.S.  
2 § 44-1962, and A.R.S. § 44-3201, that Respondents WCM and Wagner, as his sole and separate  
3 obligation, and Respondent Wagner and Respondent Spouse, as a community obligation, pay  
4 restitution in the amount of \$55,928 as a result of the conduct set forth in the Findings of Fact and  
5 Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be made to the  
6 "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any  
7 principal amount outstanding shall accrue interest at the rate of ten percent per annum from the date  
8 of purchase until the date of this order.

9 IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will  
10 accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum or  
11 (ii) at a rate per annum that is equal to one per cent plus the prime rate as published by the board of  
12 governors of the federal reserve system in statistical release H. 15 or any publication that may  
13 supersede it on the date that the judgment is entered.

14 The Commission shall disburse the funds on a pro-rata basis to investors shown on the  
15 records of the Commission. Any restitution funds that the Commission cannot disburse because an  
16 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an  
17 investor because the investor is deceased shall be disbursed on a pro-rata basis to the remaining  
18 investors shown on the records of the Commission. Any funds that the Commission determines it is  
19 unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, A.R.S. § 44-3296, A.R.S. §  
21 44-1962, and A.R.S. § 44-3201, that Respondents WCM and Wagner, as his sole and separate  
22 obligation, and Respondent Wagner and Respondent Spouse, as a community obligation, pay an  
23 administrative penalty in the amount of \$15,000 as a result of the conduct set forth in the Findings  
24 of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be  
25 made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.  
26

1 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be  
2 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments  
3 shall be applied to the penalty obligation.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent Wagner's  
5 securities salesman registration is revoked and his application for registration is denied.


6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that Respondent Wagner's  
7 investment adviser representative license is revoked and his application for licensure is denied.

8 For purposes of this Order, a bankruptcy filing by Respondents shall be an act of default. If  
9 Respondents do not comply with this Order, any outstanding balance may be deemed in default and  
10 shall be immediately due and payable.

11 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the  
12 Commission may bring further legal proceedings against Respondents, including application to the  
13 superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

  
CHAIRMAN BURNS

  
COMMISSIONER DUNN

  
COMMISSIONER KENNEDY

  
COMMISSIONER OLSON

  
COMMISSIONER MARQUEZ PETERSON



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 17 day of December, 2019.

  
MATTHEW J. NEUBERT  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail [kcannon@azcc.gov](mailto:kcannon@azcc.gov).

(RJM)

**CONSENT TO ENTRY OF ORDER**

1  
2           1.       Respondents and Respondent Spouse admit the jurisdiction of the Commission over  
3 the subject matter of this proceeding. Respondents and Respondent Spouse acknowledge that they  
4 have been fully advised of their right to a hearing to present evidence and call witnesses and they  
5 knowingly and voluntarily waive any and all rights to a hearing before the Commission and all  
6 other rights otherwise available under Article 11 of the Securities Act, Article 7 of the Investment  
7 Management Act, and Title 14 of the Arizona Administrative Code. Respondents and Respondent  
8 Spouse acknowledge that this Order constitutes a valid final order of the Commission.

9           2.       Respondents and Respondent Spouse knowingly and voluntarily waive any right  
10 under Article 12 of the Securities Act and Article 8 of the Investment Management Act to judicial  
11 review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this  
12 Order.

13           3.       Respondents and Respondent Spouse acknowledge and agree that this Order is  
14 entered into freely and voluntarily and that no promise was made or coercion used to induce such  
15 entry.

16           4.       Respondents and Respondent Spouse have been represented by attorney **David**  
17 **Williams of the firm Davis Miles McGuire Gardner** in this matter, have reviewed this order with  
18 their attorney, and understand all terms it contains. Respondent and Respondent Spouse  
19 acknowledge that their attorney has apprised them of their rights regarding any conflicts of interest  
20 arising from dual representation. Respondents and Respondent Spouse acknowledge that they have  
21 each given their informed consent to such representation.

22           5.       Respondents admit the Findings of Fact and Conclusions of Law contained in this  
23 Order. Respondents agree that they shall not contest the validity of the Findings of Fact and  
24 Conclusions of Law contained in this Order in any present or future proceeding in which the  
25 Commission is a party.  
26



1           6.       Respondents further agree that they shall not deny or contest the Findings of Fact  
2 and Conclusions of Law contained in this Order in any present or future: (a) bankruptcy  
3 proceeding, or (b) non-criminal proceeding in which the Commission is a party (collectively,  
4 “proceeding(s)”). They further agree that in any such proceedings, the Findings of Fact and  
5 Conclusions of Law contained in this Order may be taken as true and correct and that this Order  
6 shall collaterally estop them from re-litigating with the Commission or any other state agency, in  
7 any forum, the accuracy of the Findings of Fact and Conclusions of Law contained in this Order. In  
8 the event Respondents or Respondent Spouse pursues bankruptcy protection in the future, they  
9 further agree that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following  
10 circumstances exist:

11           A.       The obligations incurred as a result of this Order are a result of the conduct set forth  
12 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona  
13 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

14           B.       This Order constitutes a judgment, order, consent order, or decree entered in a state  
15 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by  
16 Wagner and Respondent Spouse pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for  
17 damages, fine, penalty, citation, restitution payment, disgorgement payment, attorney fee, cost or  
18 other payment owed by Respondents and Respondent Spouse pursuant to 11 U.S.C. §  
19 523(a)(19)(B)(iii).

20           7.       By consenting to the entry of this Order, Respondents agree not to take any action or  
21 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
22 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
23 basis.

24           8.       While this Order settles this administrative matter between Respondents and the  
25 Commission, Respondents understand that this Order does not preclude the Commission from  
26



1 instituting other administrative or civil proceedings based on violations that are not addressed by  
2 this Order.

3 9. Respondents understand that this Order does not preclude the Commission from  
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
5 that may be related to the matters addressed by this Order.

6 10. Respondents understand that this Order does not preclude any other agency or  
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal  
8 proceedings that may be related to matters addressed by this Order.

9 11. Respondents agree that they will not apply to the state of Arizona for registration as  
10 a securities dealer or salesman or for licensure as an investment adviser or investment adviser  
11 representative.

12 12. Respondents agree that they will not exercise any control over any entity that offers  
13 or sells securities or provides investment advisory services within or from Arizona.

14 13. Respondent Wagner and Respondent Spouse acknowledge that any restitution or  
15 penalties imposed by this Order are community obligations.

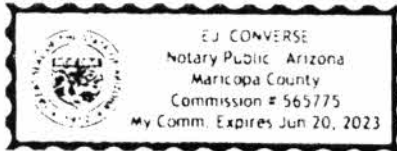
16 14. Respondents and Respondent Spouse consent to the entry of this Order and agree to  
17 be fully bound by its terms and conditions.

18 15. Respondents acknowledge and understand that if they fail to comply with the  
19 provisions of the order and this consent, the Commission may bring further legal proceedings  
20 against them, including application to the superior court for an order of contempt.

21 16. Respondents understand that default shall render them liable to the Commission for  
22 its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

23 17. Respondents agree and understand that if they fail to make any payment as required  
24 in the Order, any outstanding balance shall be in default and shall be immediately due and payable  
25 without notice or demand. Respondents agree and understand that acceptance of any partial or late  
26 payment by the Commission is not a waiver of default by the Commission.

18. Respondent Wagner represents that he is an officer of WCM and has been authorized by WCM to enter into this Order for and on its behalf.



Zachary S. Wagner  
Zachary S. Wagner, Respondent

Jessica N. Wagner  
Jessica N. Wagner, Respondent Spouse

STATE OF ARIZONA )  
 ) ss  
County of MARICOPA )

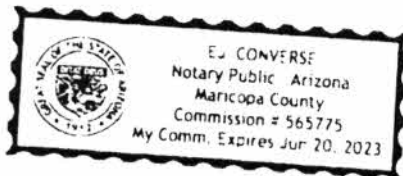
SUBSCRIBED AND SWORN TO BEFORE me this 22 day of NOVEMBER, 2019.

EJ Converse  
NOTARY PUBLIC

My commission expires:

June 20, 2023

Wagner Capital Management LLC



By Zachary Wagner  
Its Managing Member

STATE OF ARIZONA )  
 ) ss  
County of MARICOPA )

SUBSCRIBED AND SWORN TO BEFORE me this 22 day of NOVEMBER, 2019.

EJ Converse  
NOTARY PUBLIC

My commission expires:

June 20, 2023

SERVICE LIST FOR: Wagner Capital Management LLC, et al.

David W. Williams  
DAVIS MILES MCGUIRE GARDNER  
40 E. Rio Salado Parkway  
Suite 425  
Tempe, AZ 85281  
[dwilliams@davismiles.com](mailto:dwilliams@davismiles.com)  
(480)344-4047

Attorneys for all Respondents and Respondent Spouse